APPENDIX

Statement of Facts

In this case the following evidence and testimony was presented in the trial court in support of the judgment:

John L. Whaley testified that in March and April, 1966, he was living at 11609 East Asher Street in El Monte, California. Mr. Whaley is a police officer for the City of Los Angeles. (Rep. Tr. pp. 4-5.) Mr. Whaley first saw the envelope which is People's Exhibit 1 on March 23, 1966 in his mailbox at 11609 East Asher. He opened this envelope. (Rep. Tr. pp. 5-6.) Mrs. Whaley saw Exhibits 1 and 2 when they came to her home. (Rep. Tr. pp. 13-14.) In regard to the typed material (Exhibit 2), Mr. Whaley turned it over to the Los Angeles Police Administrative Vice Division. (Rep. Tr. p. 6.) Mr. Whaley saw Exhibit 3, a large manila envelope, People's Exhibit 4, a booklet entitled "Bondage Cabin," and People's Exhibit 5, a small white box containing a film, "The Count," on April 15, 1966 at 11609 East Asher. He opened the envelope up and the book marked Exhibit 4, and the box containing an eight-millimeter film (Exhibit 5), were inside it. He turned these over to Officer Shaidell and Deputy Sheriff Serio. (Rep. Tr. pp. 7-8.)

Mrs. Vera Whaley testified that he is a school teacher; she has seen the envelope marked Exhibit 3, addressed to Mrs. J. Whaley when it was in a sealed condition. (Rep. Tr. pp. 13-15.)

Donald D. Shaidell testified that he is a police officer for the City of Los Angeles assigned to Administrative Vice Division, the Pornography Unit. (Rep. Tr. p.

21.) Officer Shaidell first saw Exhibits 1 and 2 when they were brought to his attention in the Administrative Vice Division of the Los Angeles Police Department by Officer Whaley on March 23, 1966. He then contacted Michael Serio in the Los Angeles Sheriff's Department. Officer Shaidell observed Exhibits 3, 4 and 5 at 11609 Asher Street in El Monte. The envelope was sealed at that time. He saw Officer Whaley open Exhibit 3, and Exhibits 4 and 5 were inside the envelope. (Rep. Tr. pp. 21-23.)

When Officer Shaidell first saw the advertising brochure, Exhibit 2, jointly with Michael Serio, they ascertained who is assigned for Post Office Box No. 38385. They ascertained to whom the Pitney-Bowes postage meter, with postage meter number 396449, was registered; and they also secured documents from the City Clerk's Office for the fictitious name of "Esoteria." (Rep. Tr. pp. 23-24.) People's Exhibit Number 6 consists of a photostatic copy of the front of an envelope addressed to "Esoteria," P.O. Box 35385, Los Angeles, California, 90035, with the name Mrs. J. Whaley, and address of 11609 Asher Street, El Monte, California, in the upper left-hand corner, a photostatic copy of a money order drawn on the Sunset-Echo Park Branch of the Bank of America, No. 31839000, dated April 8, 1966, payable to the order of "Esoteria," in the sum of $28.95, with purchaser's signature purporting to be that of J. Whaley, attached to which is a purchaser's receipt for money order. Also on Exhibit 6 is an order form on which an "X" appears before "M.O." in the amount of $28.95 for the items listed below, which appear to be "F-9 The Mad Count and His Manacled Maids" and "B-3 Bond-

age Cabin," with a signature and address of Mrs. J. Whaley, 11609 E. Asher Street, El Monte, California below.

People's Exhibit 7 consists of a purchaser's receipt for money order number 31839000 in the sum of $28.95. The money order was purchased by Deputy Serio in the presence of Officer Shaidell; the writing which is contained on the order blank and also on the money order receipt (Exhibit 7) is identical with the receipt that is shown on the money order in Exhibit 6. (Rep. Tr. pp. 24-26.)

The check marks on Exhibit 2, the advertising brochure, at B-3, "Bondage Cabin" and also a check mark on F-9, a film, "The Mad Count and His Manacled Maids," were placed on there to indicate the items purchased by Officer Shaidell and Deputy Serio. The items checked off on the brochure are the items which were ordered in the order form in Exhibit 6. The money order was made out in the sum of $28.95 because the film, "The Mad Count and His Manacled Maids" was $25.00, and the book, "Bondage Cabin" was $3.95. (Rep. Tr. pp. 27-28.)

People's Exhibit 8 is a certificate of a corporation doing business under fictitious name dated January 20, 1966 with the corporation being Wyngate and Bevins, Inc., Samuel Ratner, President, and which lists Esoteria Company among the fictitious firm names.

Bernadine Ellis testified that she is a post office clerk at the Preuss Station on Robertson, off of Pico, Los Angeles. (Rep. Tr. pp. 33-34.) P.O. Box Number 35385 is located at her station. (Rep. Tr. p. 35.) Exhibit 9 consists of an application for post office box number 35385 with the signature of applicant being

"Sam Ratner," with date of opening being June 10, 1964. Mrs. Ellis rented the box to the defendant on June 10, 1964. The box lists "Esoteria" as among the persons entitled to receive mail. Mr. Ratner had the box in the Spring of 1966. (Rep. Tr. pp. 37-38.) Mr. Ratner paid for postage due on mail addressed to box number 35385. (Rep. Tr. p. 39.)

Robert J. Boyle testified that he was a sales representative for Pitney-Bowes, Inc., in which capacity he wrote a contract for a postage meter to be used in Mr. Ratner's mailing. (Rep. Tr. pp. 44-46.) People's Exhibit 10 is a photostatic copy of a contract, an equipment movment report, and an installation form, together with other documents Mr. Boyle identified the postal meter rental agreement in Exhibit 10 as being filled out by him, and signed by defendant. (Rep. Tr pp. 49-50.) Meter number 342959 was inserted as part of this contract. (Rep. Tr. p. 52.) People's Exhibit 11 consists of a Pitney-Bowes meter and machine. The meter number on this meter is 396449, and it is owned by Pitney-Bowes, Inc. (Rep. Tr. p. 54.) A person would not enter into a new contract when he moved from city to city, but he would have a new meter assigned to him under the same contract. (Rep. Tr. p. 56.)

William E. Greve testifed that he is a service representative from Pitney-Bowes, and as such he has serviced and taken care of meter number 396449 at 919 North Fairfax, Los Angeles. He has taken care of problems in connection with this machine twice. Mr. Greve demonstrated and put in new equipment there on March 17, 1966. People's Exhibit 11 is the meter with number 396449. (Rep. Tr. pp. 57-58.) Mr. Greve has checked the records in regard to the meter

numbers of the Ratner account, and they have a different number than what existed on the original installation date, because they moved from one city into another city, and this requires a different postage meter. As to the number on People's Exhibit 10, meter number 342959, another number was subsequently given to this particular contract as a result of the account moving to a different city. (Rep. Tr. pp. 59-60.)

People's Exhibit 12 is a change of user's name and address report which is dated January 10, 1966, which shows a change for Prima Book Inc. from 1904 Arlington Avenue to 919 North Fairfax with the machine serial number being 396449. Exhibit 13 is an invoice, equipment movement report and an installation and pickup document. Exhibit 14 is an equipment movement report, a conditional sales contract and three installation forms. Mr. Greve filled out these forms. The customer's meter number was 396449 and the installation of the new machines was at 919 North Fairfax. (Rep. Tr. p. 64; Exhibit 14.) Two of the forms in Exhibit 14 were signed by Anne Miller. (Rep. Tr. p. 64.)

Michael J. Serio testified that he is detached from the Sheriff's Office at the present time and now is with the Department of Justice, State of California. (Rep. Tr. p. 68.) In Exhibit 6, Mr. Serio purchased the money order at the Echo Park and Sunset Boulevard Branch of the Bank of America. He prepared the envelope addressed to Esoteria, and completed the order blank ordering the film and the book, and he signed the signatures on the money order, representing himself to be Mrs. J. Whaley. (Rep. Tr p. 69.) On April 12, 1966, he inserted the order blank and the money order in the envelope, and detached the pur-

chase receipt stub (Exhibit 7) and deposited the envelope in a mailbox. (Rep. Tr. p. 70.)

Eugene Dossi testified he is a sergeant of police for the City of Los Angeles attached to the Administrative Vice Division. (Rep. Tr. p. 73.) He is one of the arresting officers in the case. When he went to 919 North Fairfax, the location of arrest, he had a warrant from the Municipal Court in Los Angeles. 919 North Fairfax is a residential type structure in a business area, a wood frame building. It is approximately 10 or 15 feet from the sidewalk. (Rep. Tr. p. 74.) The arrest occurred in April, 1966. (Rep. Tr. p. 75.)

Inside the location of arrest, there were numerous cardboard cartons with envelopes and other materials; there were books in various cartons throughout the front room portion. There were hi-fi records in their containers. Also there were materials that were used to mail items and to secure items when they were being mailed. (Rep. Tr. pp. 77-78.) Exhibit 11 was attached to the machine that was used in addressing envelopes. (Rep. Tr. p. 79.)

Officer Dossi took out a copy of each booklet that was in certain cartons, and he took photographs from shelves in the back room. (Rep. Tr. p. 79.) People's Exhibit 15 is a book named "Esoteria"; People's Exhibit 16 is a booklet entitled "Spanked Female"; People's Exhibit 17 is a book entitled "Punishment Club"; Exhibit 18 is a book entitled "Bondage Bride of the Baron"; Exhibit 19 is a booklet entitled "Diary of a Dominated Male"; and Exhibit 20 is a booklet entitled "The Seat of the Trouble." In regard to the books (Exhibits 15 through 20), the officer removed such books from the location where Mr. Ratner

was arrested. He turned the material which he secured from the Fairfax location over to Officer Shaidell. In addition Officer Dossi gave to Officer Shaidell two photographs of each photograph which he removed and one record which he removed from that location. (Rep. Tr. pp. 80-81.)

People's Exhibit 21 is a picture entitled "Fifteen Male Nudists at Home." Exhibit 22 consists of nine pictures depicting males and females. Exhibit 23 is a picture of a man with a beard and a paddle in his hand, bending over a partially clad female.

Mrs. Loretta Anne Miller testified that in the Spring of 1966 she worked for Mr. Ratner at 919 North Fairfax doing general office work. (Rep. Tr. p. 105.) She handled books bearing the titles of Exhibits 15 through 20, carting them from one room to another and mailing them. (Rep. Tr. pp. 109-110.) People's Exhibit 11 looks like the meter which she took to the Post Office to have reset. (Rep. Tr. p. 112.) She saw a box containing film similar to Exhibit 5 in a closet at 919 North Fairfax. (Rep. Tr. p. 116.)

Mrs. Miller testified later in the trial that she started working for Mr. Ratner last December [1965]. She has seen a book like Exhibit 15 before, as Mr. Ratner had this type of book on his premises, and he mailed out that type of book from his location. (Rep. Tr. pp. 200-201.) In regard to Exhibits 16 through 20, she has seen books like them, and Mr. Rattner dealt in these types of books. (Rep. Tr. pp. 201-203.) She has seen the book "Bondage Cabin," Exhibit 4, and Mr. Ratner dealt in that type of book. Rep. Tr. p. 203.) Her function with these types of books was to make sure they were mailed out. She mailed out thousands of these books. (Rep. Tr. pp. 203-204.)

In regard to Exhibit 5, the film entitled "The Mad Count and His Manacled Maids," defendant told her about this film. (Rep. Tr. p. 204.) Mr. Ratner said that the male model hadn't appeared and that his partner, Rocky Snyder, had agreed to be the Count in the film. (Rep. Tr. p. 205.) Mr. Ratner told her that the story of the film was that two girls were supposed to have come to look for a job, and one was jealous of the other one, and one girl beat the other, and then the other girl then beat the first girl, and then he ended up beating both of them. (Rep. Tr. p. 206.)

In regard to the advertising brochure, Exhibit 2, Mrs. Miller mailed approximately 50,000 of them. (Rep. Tr. p. 206.) She mailed out books like those which appear on the side of the brochure. (Rep. Tr. pp. 206-207.)

The cash, checks, and money orders which came in were addressed to various companies under Wyngate and Bevins. These companies were S. and D. Products, Esoteria, and Wyngate and Bevins. (Rep. Tr. pp. 207-208.) Mr. Ratner sent out various "scams." A scam is something which, when read by a person, would be deemed to be hard-core pornography, in view of the price that was quoted. The people who received the mailing would feel that no one would sell something that was not hard-core pornography for that price. (Rep. Tr. p. 208.) She learned the word "scam" from Sam Ratner. (Rep. Tr. p. 209.)

Wyngate and Bevins really was Sam and Rocky. (Rep. Tr. p. 209.) After Mrs. Miller was shown the initial procedure, Mr. Ratner told her anything which she had to know. (Rep. Tr. p. 211.)

In regard to whom a book with a story such as "Bondage Cabin" would appeal to, defendant said that

there were people that enjoy this type of thing. (Rep. Tr. pp. 211, 213.)

Mrs. Miller testified that defendant wrote Exhibit 15, the booklet entitled "Esoteria." Defendant received the ads and typed them up. There are about five phony ads in that booklet. (Rep. Tr. pp. 213-214.)

Mrs. Miller has seen pictures, such as those in the Exhibit 22 series at 919 North Fairfax. Such pictures were put on the boxes of film that were to be sold retail in stores, as was the picture which is Exhibit 21. (Rep. Tr. pp. 215-216.)

In regard to mailing lists, the amounts paid were anywhere from $20.00 a hundred names up to $1.00 a name. The list at $1.00 a name consisted of known buyers. (Rep. Tr. p. 219.)

Officer Shaidell testified that the books which are Exhibits 15 through 20 were given to him by Sergeant Dossi, and he put them in a filing cabinet located in his office under "Ratner." (Rep. Tr. pp. 144-145.)

Carl Schwartz testified that he is in the printing business, known as Carlen Press. He knows the defendant as a personal friend, and Mr. Schwartz has done some printing for defendant's company for a year and a half to two years. Mr. Schwartz has been the advertising brochure which is Exhibit 2 before and he printed this brochure at the request of Mr. Ratner. He printed roughly four to five thousand of these brochures. (Rep. Tr. pp. 151-153.) Mr. Schwartz printed Exhibit 23 for the company of Wyngate and Bevins. Exhibit 23 is a part of the brochure which is Exhibit 2. In regard to the printing of the brochure, he is furnished with "camera-ready copy" which is then composited together. Mr. Ratner, acting in behalf of Wyn-

gate and Bevins, furnished him with the camera-ready copy. Exhibit 23 is the same picture which is shown in the lower left-hand corner of Exhibit 2. (Rep. Tr. pp. 153-154.) Mr. Schwartz is familiar with the picture which is Exhibit 22-A, which came out of a brochure which he printed. (Rep. Tr. p. 155.)

Mr. Schwartz printed the book "Esoteria," which is Exhibit 15, for Mr. Ratner, and he believes there were 1500 printed. (Rep. Tr. pp. 157-158.)

When he was going to print a book Mr. Schwartz would receive paste-downs exactly the way the book was to be printed. Mr. Schwartz takes a picture of the item and makes a plate. (Rep. Tr. p. 158.) The pictures that appear throughout the book were furnished to him by Mr. Ratner. The material on page 39 of Exhibit 15, including the "Esoteria, P.O. Box 35385" was supplied to him. (Rep. Tr. pp. 159-160.) Mr. Schwartz delivered some of the materials to 919 North Fairfax. (Rep. Tr. pp. 160-161.)

Harold Hippler is employed by the Sheriff's Department of the County of Los Angeles. (Rep. Tr. pp. 164-165.) Exhibit 4 was received in evidence (Rep. Tr. p. 177) and read to the jury by Mr. Hippler (Rep. Tr. p. 178.) Exhibit 5, the film, was received in evidence (Rep. Tr. p. 181) and shown to the jury. (Rep. Tr. p. 182.)

Torrance Eddy testified that he is a trainee operations officer of the Bank of America, Sunset-Echo Park Branch. He has access to the books and records of that branch. The money order, which is Exhibit 24, was obtained from the files of the cancelled money orders which are kept on file in the vault. The money order has been deposited to the account which is stamped on

the back. The fact that it is perforated with "Paid on 4-18-66," means that the order was paid. On the back as an endorsement of the order there appears the word "Esoteria," and below that "For Deposit Only, pay to the order of Security First National Bank, Wyngate and Bevins, Incorporated, 081-991." (Rep. Tr. pp. 193-194.)

Donald Schoof is a postal inspector for the United States Post Office Department who works out of the Los Angeles office. Exhibit 25, an application for a post office box on Form 1093, was written by Sam Ratner in his presence on April 5, 1962, with the exception of the places where Mr. Schoof's initials appear and the date. The two signatures were written by Sam Ratner, in his presence. Mr. Schoof showed the change-of-address card, which is Exhibit 26, to defendant, who identified the card as having been written by him. (Rep. Tr. pp. 195-198.)

Robert Venables testified that he is assistant manager for the Security-First National Bank, 7900 Melrose Avenue. He has the books and records of the bank available to him. He has seen the original of Exhibit 27, a photostatic copy of a signature card for a bank account before. The original is the authorization to open an account at his branch under the account name of Wyngate and Bevins. The account was opened on 9-3-65 by one of his clerks. It is for a mail order business and Sam Ratner and William Snyder are the names on the account. Sam is the president and William Snyder is the secretary-treasurer. The account was closed on May 27, 1966. (Rep. Tr. pp. 240-242.)

Sergeant Herbert L. Campbell testified that he is an examiner of questioned documents assigned to the Crime

Lab of the Los Angeles Sheriff's Department. A stipulation of his qualifications as to questioned documents was offered by the defense. It is Mr. Campbell's opinion that the Sam Ratner signatures appearing on Exhibits 25, 26 and 27 were all written by the same person. (Rep. Tr. pp. 243-244.)

Exhibits 15 through 20 were received in evidence. (Rep. Tr. p. 246.) Harold Hippler read Exhibit 15 to the jury. (Rep. Tr. p. 246.)

Marcus Crahan testified that he is a physician and is the medical director of the Sheriff's Department and is on the psychiatric panel of the Department of Mental Hygiene and the Superior Court. (Rep. Tr. p. 266.) Dr. Crahan has read and examined Exhibit 4, the book entitled "Bondage Cabin"; and he has viewed and examined the film called "The Count" (Rep. Tr. p. 269.) He defined sadism, its relation to sex, masochism, and flagellation. (Rep. Tr. pp. 270-272.) In regard to the book "Bondage Cabin," Dr. Crahan testified that he does not believe that this book is a literary object; that he doesn't think it was written for any purpose except to excite abnormal emotions in abnormal people. The abnormal groups that it was written to excite are certain homosexuals, masochists and sadists. The book would appeal to the prurient interest of these groups. The book has neither moral value, scientific value, nor literary value. (Rep. Tr. pp. 274-275.) Dr. Crahan has the same opinions as to the story "Flagella," which is a wholesale flagellation proposition. (Rep. Tr. p. 276.)

In regard to the film which is Exhibit 5, Dr. Crahan believes that it was a senseless beating of the posteriors of two women by a man. There was no rhyme nor rea-

son to the thing except just repetition of this beating with different instruments. (Rep. Tr. p. 276.) Dr. Crahan testified, "I think a person viewing it might want to maybe participate in this kind of behavior if he was abnormal, or if he was drunk, and went home, something like this." (Rep. Tr. p. 277.) The film would appeal to deviate groups. People who are deviates such as sadists, masochists, flagellants, or homosexuals are frequently able to suppress their desires. Books such as Exhibit 4, and films such as Exhibit 5, would have a tendency to cause a person who is a deviate to take some overt action in regard to his deviation. (Rep. Tr. pp. 277-278.) Such matter ". . . would excite his pattern, whatever it might be, by removing some inhibitions that were holding it in control." (Rep. Tr. p. 278.)

Lester D. Zabel read Exhibit 19, the book entitled "Diary of a Dominated Male" to the jury. (Rep. Tr. pp. 296-297.)

On cross-examination, Dr. Theodore Polos, a psyciatrist (Rep. Tr. p. 309) testified that he did not see any socially redeeming value in the book "Bondage Cabin" and in the film "The Count." (Rep. Tr. pp. 325-326.) He thinks the people who would purchase "Bondage Cabin" and would derive pleasure from it are people who are mentally ill. (Rep. Tr. p. 327.) A sadist or a masochist who reads this would get pleasure from it, sexually. (Rep. Tr. p. 328.)

Mr. Jacobson read Defendant's Exhibit D, Edgar Allan Poe's "The Pit and the Pendulum" to the jury, (Rep. Tr. p. 369.) Mr. Jacobson read Defendant's Exhibit G-1, the book "Dairy of a Furious Lash" to the jury. (Rep. Tr. pp. 403-404, 406.)